IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7921 OF 2006

Motilal M. Gupta
Moti Building, Ghungat Nagar
Bhiwandi, District Thane .. Petitioner.

V/s.

1. Chief Commissioner of
Income-tax, Vardaan,
1st Floor, MIDC, Wagle
Industrial Estate, Thane

2. Income Tax Officer
Ward 1(2), Rani
Mansion, Murbad, Kalyan

3. Tax Recovery Officer,
Ward 1(1), Rani
Mansion Murbad, Kalyan .. Respondents.

Mr.Salil Kapoor with Mr.Jitendra Shah i/by Mr.K. Gopal for the petitioner.

Mr.Ashok Kotangale for the respondents.

CORAM : DR.S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.

DATED : 23RD JANUARY, 2007.

ORAL JUDGMENT : (Per J.P. Devadhar, J.)

. Rule, Rule made returnable forthwith. By consent of petition is taken up for final hearing. In this petition, the petitioners have challenged the order dated 20th March, 2006 passed by the Chief Commissioner of Income Tax, Bombay ('CCIT' for short) under Section 119(2)(a) of the Income Tax Act, 1961 ('the Act' for short). By the said order the CCIT has declined to grant waiver of interest

levied upon the petitioner under Section 234A, 234B and 234C of the Act for the AY's 1989-90 to 1992-93.

2. The facts relevant for the present petition are that, on 5th March, 1992 search action under Section 132 of the Act was carried out at the office premises of the petitioner. At the time of search, the assessee declared undisclosed income of Rs.42.82 lakhs for AY 1992-93. Accordingly, the assessee filed return for AY 1992-93 offering the aforesaid undisclosed income. Pursuant to the order passed by the Commissioner of Income Tax dated 12th February, 1992 under Section 132(12) of the Act, the assessee was entitled to seek spread over of the undisclosed income for AY 1989-90 to AY 1992-93. Accordingly, the petitioner filed revised return for AY 1989-90 to AY 1992-93. In the assessment order passed thereon, the assessing officer levied interest under Section 234A, 234B and 234C of the Act.

3. Thereupon, the petitioner filed an application before the CCIT seeking waiver of interest levied upon the petitioner. By the impugned order, the CCIT has rejected the waiver application mainly on three grounds : (a) on adjustment of the prepaid taxes towards the interest, the outstanding tax liability is Rs.9,06,49/- (b) additional income has been offered after the notices under Section 148 of the Act on

22nd July, 1992, hence returns filed cannot be said to be voluntary for waiving interest under Section 234A and (c) no cash was seized during the search and, therefore, the interest under Section 234B and 234C cannot be waived. Challenging the aforesaid order, this petition is filed.

4. Admittedly, the tax payable by the petitioner for the assessment years in question is Rs.14,84,635/- whereas the tax paid by the petitioner is Rs.16,53,720/-. As per the circular issued by the Board, the petitioner is entitled to seek waiver only if the tax payable have been paid before seeking waiver of interest. In the present case, taxes paid by the petitioner are more than the tax payable and it is only because the amount of tax paid has been adjusted towards the interest, the CCIT has come to the conclusion that there are outstanding tax arrears to the tune of Rs.9,06,449/-. In our opinion, the proper course for the CCIT was to adjust the amount of tax paid by the petitioner towards the tax due and payable instead of adjusting the same towards the interest payable by the petitioner. Therefore, refusal to waive interest on the ground that the tax liability has not been discharged cannot be sustained.

5. The findings recorded by the CCIT that the additional income has been offered after issuance of notice under Section 148 of the Act is also unsustainable because in the present case during the course of search the assessee had made disclosure of additional income in the sum of Rs.42.82 lakhs on 5th March, 1992 and offered the same for AY 1992-93. It is only after the Commissioner of Income Tax in his order dated 2nd February, 2005 passed under Section 132(12) of the Act permitting spread over of the undisclosed income, revised returns were filed. In these circumstances, the findings recorded by the CCIT to the effect that the additional income has been offered after issuance of notice under Section 148 cannot be accepted.

6. Third reason for rejecting the application for waiver of interest is that no cash was seized during the search. Under the Board circular what is to be seen is whether the assessee was incapacitated for making payment of tax immediately after the search and seizure action. In the present case admittedly, entire stock belonging to the petitioner were seized during the course of search and seizure operation and they were not released. In these circumstances, grievance of the petitioners that on account of seizure of entire stock, he was not in a

position to pay the taxes ought not to have been disbelieved.

7. For all the aforesaid reasons, we quash and set aside the order passed by the CIT under Section 119(2)(a) of the Act on 20th March, 2006 and remit the matter back to the CCIT to consider the application of the petitioner in accordance with law and pass appropriate orders thereon.

8. Rule is made absolute in terms of this order with no order as to costs.

9. The writ petition stands disposed of.

(DR.S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)